

Appendix H Soil Erosion and Sedimentation Control Ordinance

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AN ORDINANCE TO PROVIDE FOR THE CONTROL OF SOIL EROSION AND SEDIMENTATION

SECTION 1 Title

This ordinance may be cited as the Iredell County Soil Erosion and Sedimentation Control Ordinance.

SECTION 2 Purpose

This ordinance is adopted for the purposes of:

1. regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and
2. establishing procedures through which these purposes can be fulfilled.

SECTION 3 Definitions

As used in this ordinance, unless the context clearly indicates otherwise, the following definitions apply:

“Accelerated Erosion” means any increase over the rate of natural erosion as a result of land-disturbing activity.

“Act” means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

“Adequate Erosion Control Measure, Structure, or Device” means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

“Affiliate” means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

Approving Authority – means the Division or other State or a local government agency that has been delegated erosion and sedimentation plan review responsibilities in accordance with the provisions of the Act.

“Being Conducted” means a land-disturbing activity has been initiated and **not deemed complete by the Approving Authority.** ~~permanent stabilization of the site has not been completed.~~

"Borrow" means fill material ~~that~~ which is required for on-site construction ~~that~~ and is obtained from other locations.

"Buffer Zone" means the strip of land adjacent to a lake or natural watercourse.

"Coastal Counties" means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.

"Commission" means the North Carolina Sedimentation Control Commission.

"Completion of Construction or Development" means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

"Department" means the North Carolina Department of Environmental Quality.

"Director" means the Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.

"Discharge Point or Point of Discharge" means that point ~~where~~ at which storm water runoff leaves a tract of land ~~where a land-disturbing activity has occurred or enters a lake or natural watercourse~~.

"District" means the Iredell County Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

"Energy Dissipater" means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

"Erosion" means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.

"Ground Cover" means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

"High Quality Waters" means those classified as such in 15A NCAC **02B .0224, which is herein incorporated by reference including subsequent amendments and additions.** 2B.0101(e) (5) ~~General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. 150B-14(c).~~

"High Quality Water (HQW) Zones" means, for the Coastal Counties, areas within 575 feet of High Quality Waters; and for the remainder of the state, areas within one mile and draining to HQW's.

“Lake or Natural Watercourse” means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, ~~natural or impounded in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.~~

“Land-disturbing Activity” means any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

“Local Government” means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.

“Natural Erosion” means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

“Parent” means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

“Person” means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

“Person Conducting Land-Disturbing Activity” means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.

“Person Who Violates or Violator, as used in G.S. 113A-64, means: any landowner or other person who has financial or operational control over the land-disturbing activity; or who has directly or indirectly allowed the activity, and who has failed to comply with any provision of the Act, the rules of this Chapter or any order or local ordinance adopted pursuant to the Act as it imposes a duty upon that person.

“Person Responsible for the Violation” means:

- ~~1. the developer or other person who has or holds himself out as having financial or operation control over the land-disturbing activity; or~~
- ~~2. the landowner or person in possession or control of the land that has directly or indirectly allowed the land-disturbing activity, or benefited from it or failed to comply with a duty imposed by any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.~~

“Phase of Grading” means one of two types of grading: rough or fine.

“Plan” means an erosion and sedimentation control plan.

“Sediment” means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

“Sedimentation” means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

“Siltation” means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

“Storm Drainage Facilities” means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.

“Stormwater Runoff” means the **runoff** ~~surface flow~~ of water resulting from precipitation in any form and occurring immediately after rainfall or melting.

“Subsidiary” means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

“Ten-Year Storm” means **a rainfall** ~~the storm water runoff resulting from precipitation of~~ an intensity **that, based on historical data, is predicted by a method acceptable to the Approving Authority** ~~expected~~ to be equaled or exceeded, on the average, once in ten years, and of a duration **that** ~~which~~ will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

“Tract” means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

“Twenty-five Year Storm” means **a rainfall** ~~the storm water runoff resulting from precipitation of~~ an intensity **that, based on historical data, is predicted by a method acceptable to the Approving Authority** ~~expected~~ to be equaled or exceeded on the average, once in 25 years, and of a duration **that** ~~which~~ will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

“Uncovered” means the removal of ground cover from, on, or above the soil surface.

“Undertaken” means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

“Velocity” means the **speed** ~~average velocity~~ of flow through the cross section **perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows.** ~~of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical~~

lines at the main channel banks. ~~Overload flows are not to be included for the purpose of computing velocity of flow.~~

“Waste” means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.

“Working Days” ~~means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.~~

SECTION 4 Scope and Exclusions

I. Geographical Scope of Regulated Land-Disturbing Activity

This Ordinance shall apply to land-disturbing activity within Iredell County and the territorial and extraterritorial jurisdictions of Mooresville, Statesville and Troutman, as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument or law.

Two types of permits are required for land-disturbing activities. Erosion control permits are required for projects that will disturb one (1) acre or more, or one half (1/2) acre or more in a water supply watershed area. Grading permits are required for grading that takes place for the construction of a residential dwelling and any non-residential principle structure.

II. Exclusions from Regulated Land-Disturbing Activity

Notwithstanding the general applicability of this ordinance to all land-disturbing activity, this ordinance shall NOT apply to the following types of land-disturbing activity:

- A.** Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 - 1. Forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
 - 2. Dairy animals and dairy products.
 - 3. Poultry and poultry products.
 - 4. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 - 5. Bees and apiary products.
 - 6. Fur producing animals.
 - 7. Mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.

- B. An Activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract.
- C. An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- D. A land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
- E. An activity which is essential to protect human life during an emergency.
- F. Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- G. Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2.

III. Plan Approval Requirement for Land-Disturbing Activity

No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a Plan approval therefor from the County.
(amended 11/19/19, TA-2019-02)

IV. Protection of Property

Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.
(amended 11/19/19, TA-2019-02)

V. More Restrictive Rules Shall Apply

Whenever conflicts exist between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.
(amended 11/19/19, TA-2019-02)

VI. Plan Approval Exceptions

Notwithstanding the general requirement to obtain a Plan approval prior to undertaking land-disturbing activity, a Plan approval shall not be required for land-disturbing activity that does not exceed .99 acres or .49 acres in a water supply

watershed in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

SECTION 5 **Mandatory Requirements for Land-Disturbing Activity**

I. **Buffer zone**

A. **Standard Buffer**

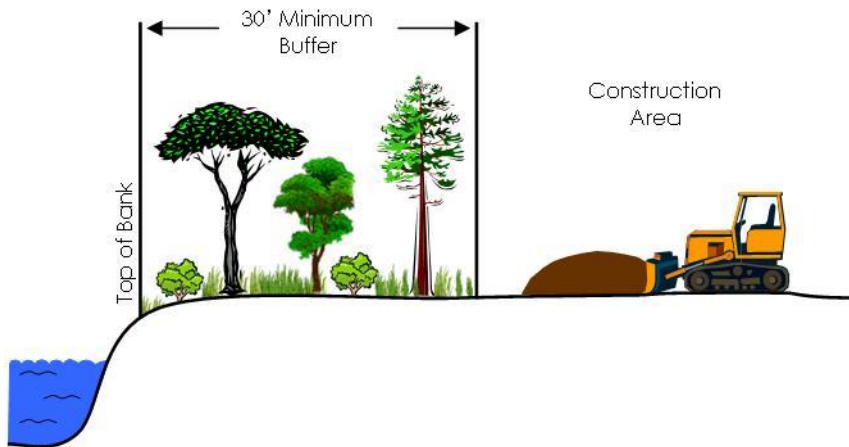
No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse thirty (30) feet minimum inside the Water Supply Watershed area or twenty-five (25) feet minimum in all areas outside of the Water Supply Watershed from edge of Lake or Natural Watercourse.

B. **Projects On, Over or Under Water**

This subdivision shall NOT apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

C. **Buffer Measurement** - Unless otherwise provided, the width of a buffer zone (See Figure H-5.1) is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with a minimum thirty (30) feet from Lake or Natural Watercourse in all areas inside the Water Supply Watershed or minimum twenty-five (25) feet from Lake or Natural Watercourse in all areas outside the Water Supply Watershed. For rivers, measurement starts "at the most landward limit of the top of the bank. For lakes, measurement starts at the "most landward limit of the full-pond level."

Figure H-5.1 Buffer Zone



II. Graded Slopes and Fills

The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within seven (7) days on slopes greater than 3:1 and fourteen (14) days on other areas (see Table 10.5) of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.

(amended 7/17/12, TA-2012-01)

III. Fill Material

~~Unless a permit from the Department's Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.~~

Materials being used as fill shall be consistent with those described in 15A NCAC 13B .0562 unless the site is permitted by the Department's Division of Waste Management to operate as a landfill. Not all materials described in Section .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly.

IV. Ground Cover

Whenever land-disturbing activity **that will disturb one (1) acre or more or one half (1/2) acre or more in a water supply watershed** is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a ~~viable~~ permanent ground cover sufficient to restrain erosion

after completion of construction or development. ~~The viable permanent ground cover must be established prior to the removal of existing erosion control measures.~~ Except as provided in Section H-8 B(5) of this ordinance, provisions for a **permanent** ground cover sufficient to restrain erosion must be accomplished within ~~seven~~ **90 calendar**(7) days **following completion of construction or development.** on perimeter areas and slopes greater than 3:1 and fourteen (14) days on other areas (See Table H-8.1).
(amended 7/17/12, TA-2012-01)

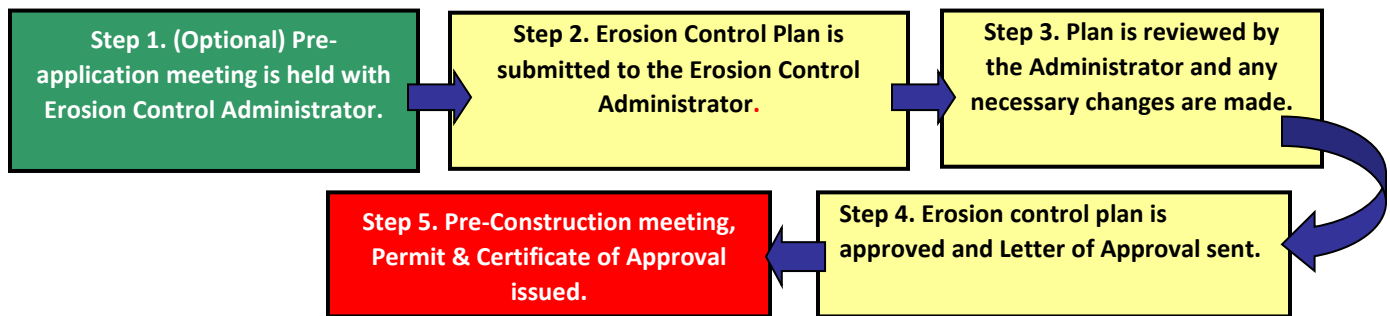
SECTION 6 Erosion and Sedimentation Control Plans

I. Erosion Control Permit Approval Process

Prior Plan Approval

No person shall undertake any land-disturbing activity that will disturb one (1) acre or more, or one half (1/2) acre or more in a water supply watershed area, on a tract unless, thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with and approved by the County. This shall include the aggregation of smaller lots within a subdivision or development that are under the same ownership and which are equal to or greater than one (1) acre (equal to or greater than one half (1/2) acre in a water supply watershed). The process for gaining plan approval is as follows:

A. Major Erosion Control Permit Approval Process



Step 1. Pre-Application Meeting

Depending upon the size and scope of the project the applicant may schedule a pre-application meeting with the Erosion Control Administrator to review the proposed plan and control measures.

Step 2. Plan is Submitted

The Erosion Control Plan is submitted to the Administrator. Work may only commence after Step 5.

Step 3. Plan is Reviewed

The Plan is reviewed by the Administrator and any required changes are made.

Step 4. Plan Approval

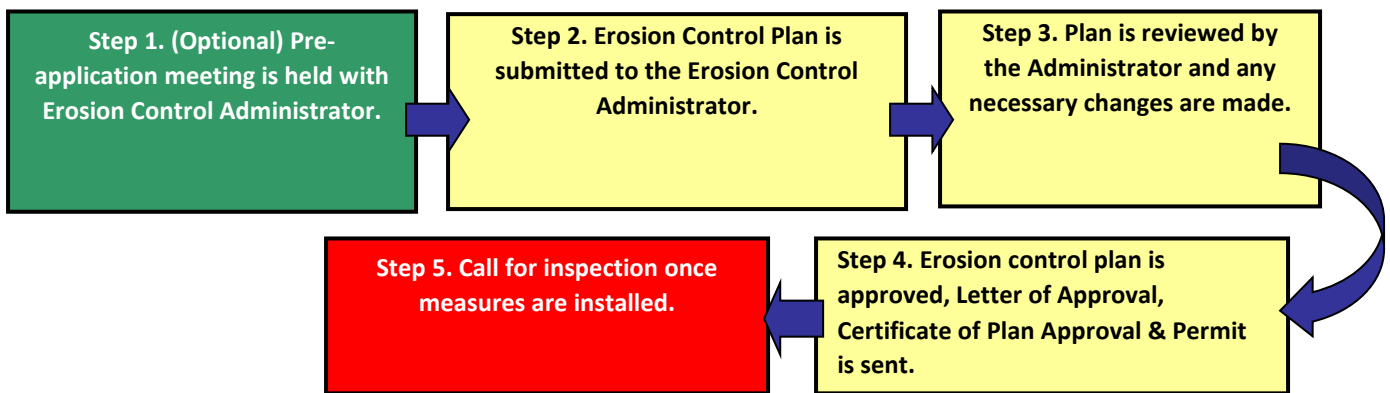
The Erosion Control Administrator shall approve the plans and send the Letter of Approval to the financially responsible party. Work cannot begin until the Certificate of Approval has been issued.

Step 5. Pre-Construction Meeting, Permit & Certificate of Approval

The Erosion Control Administrator shall require a pre-construction meeting prior to beginning any site work. As part of the pre-construction meeting, the Erosion Control Administrator shall issue the Erosion Control Permit and a Certificate of Plan Approval at the site. This shall authorize the applicant to begin work. See Section ~~9-6.8~~ 6.III.L for information on the pre-construction meeting.

(amended 7/17/12, TA-2012-01)

B. Minor Erosion Control Permit Approval Process



Step 1. Pre-Application Meeting

The applicant may schedule a pre-application meeting with the Erosion Control Administrator to review the proposed plan and control measures.

Step 2. Plan is Submitted

The Erosion Control Plan is submitted to the Administrator. Work may only commence after Step 4.

Step 3. Plan is Reviewed

The Plan is reviewed by the Administrator and any required changes are made.

Step 4. Plan Approval

The Erosion Control Administrator shall approve the plans and send the Letter of Approval, Certificate of Plan Approval and the Permit to the financially responsible party. Work cannot begin until the Certificate of Approval has been issued.

Step 5. Call for Inspection

Call for an inspection once the measures are installed.

II. Grading Permit Process

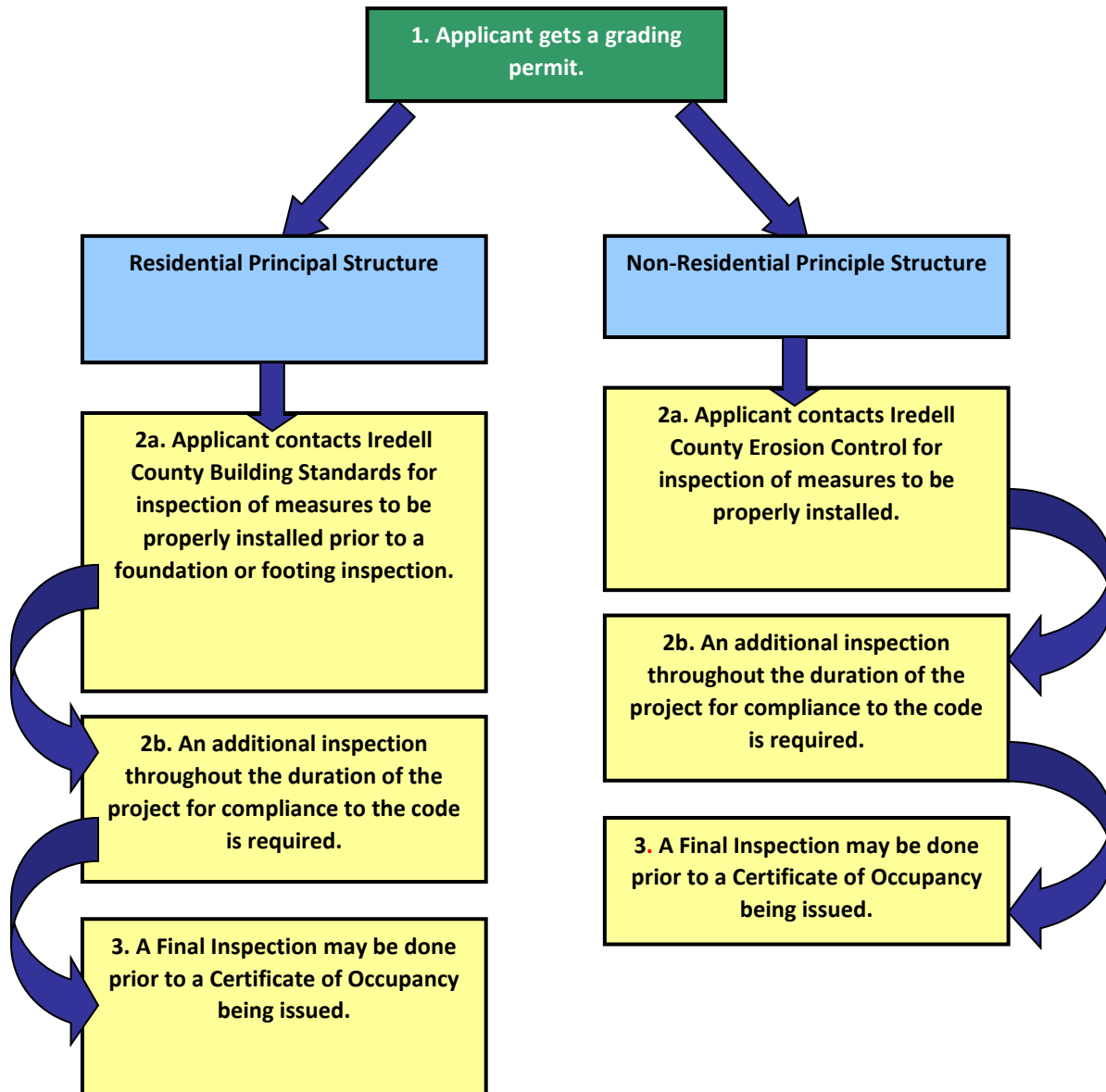
A grading permit shall be issued by the County prior to grading for the construction of a residential dwelling and any non-residential principal structure. No building permit for a residential dwelling or non-residential principal structure shall be issued until a grading permit has been issued. The permit includes at least one initial inspection and may require additional inspections throughout the duration of the project. First inspection will be performed prior to a foundation building inspection for all residential or nonresidential principal structures. A final inspection if needed, will take place prior to any final building inspection for a Certificate of Occupancy for all residential or nonresidential principal structures. Further inspections can happen throughout the building process for assurance that the site is in compliance with measures in accordance with Soil and Sediment Control requirements in this Ordinance.

For the purpose of this provision, the following uses shall NOT be included:

- plowing;
- filling;
- sowing;
- gardening; and
- other such activities in relation to farming or horticulture.

In addition to obtaining the permit; the owner, building contractor, or other responsible party shall:

- A. Control run-off as to NOT damage or adversely impact adjoining properties, lakes, and natural watercourses by providing silt fencing and stabilization or utilizing Low Impact Design (drainage swales, functional landscaping, etc.); and
- B. Refrain from altering the general direction of the natural drainage flow.



III. Erosion and Sediment Control Plan Requirements

A. Plan Submission

A plan shall be prepared for all land-disturbing activities subject to this ordinance whenever the proposed activity will disturb one (1) acre or more (one half (1/2) acre or more inside a water supply watershed) on a tract. Two paper copies and one (1) electronic copy of the plan shall be filed with the County.

B. Plan Types

Plans shall be broken into two categories, major and minor. The minimum requirements for these plans are shown in Table H-6.1

1. Major Erosion and Sediment Control Plan

A plan for the location, installation and maintenance of measures to control all anticipated erosion, and prevent sediment and increased runoff from leaving the site of a land disturbing activity of one (1) acre or greater. This plan may require a seal from an Engineer, Architect, or Surveyor.

2. Minor Erosion and Sediment Control Plan

A plan for the location, installation and maintenance of measures to control all anticipated erosion, and prevent sediment and increased runoff from leaving the site of a land disturbing activity of one half (1/2) acre but less than one (1) acre inside a water supply watershed. This plan shall NOT require a seal from an Engineer, Architect, or Surveyor.

Table H-6.1 Erosion Control Plan Requirements

Required Information	Major Plan	Minor Plan
Vicinity Map w/North Arrow and Scale	x	x
General Site Features		
Legend w/North Arrow, Scale, etc.	x	x
Property Lines	x	x
Existing Contours (topo lines)	x	x
Proposed Contours	x	x
Limits of Disturbed Area (acreage total, delineated limits, and label)	x	x
Planned and Existing Building Locations and Elevations	x	x
Planned and Existing Road Locations and Elevations	x	x
Lot and/or Building Numbers	x	x
Geologic Features (rock outcrops, seeps, springs, wetlands, streams, lakes, ponds, dams, etc.)	x	x
Easements and Drainage Ways	x	x
Profiles of Streets, Ditch Lines, Utilities, etc.	x	x
Stockpiled Topsoil or Subsoil Locations	x	x
Soil Borrow Info*	x	x
Army Corps 404 Permit and Water Quality 401 Certification (if applicable)	x	x
Erosion Control Measures (on Plan)		
Legend	x	x
Location of Permanent Measures	x	
Location of Temporary Measures	x	x
Construction Drawings and Details for Temporary and Permanent Measures	x	
Maintenance Requirements for Measures	x	
Contact Person Responsible for Maintenance	x	
Site Drainage Features		
Existing and Planned Drainage Patterns (include off-site areas that drain through project)	x	
Method of Determination of and Calculations for Acreage of Land Being Disturbed	x	

Required Information	Major Plan	Minor Plan
Size and Location of Culverts and Sewers	x	
Soil Information: type and special characteristics	x	
Soil Information Below Culvert Storm Outlets	x	
Name and Classification of Receiving Water Course or Name of Municipal Operator (only where stormwater discharges are to occur)	x	
Stormwater Calculations		
Pre-construction runoff calculations for each outlet from the site (at peak discharge points)	x	
Design calculations for peak discharges of runoff (including the construction phase and the final runoff coefficients of the site)	x	
Design calculations of culverts and storm sewers	x	
Discharge and velocity calculations for open channel and ditch flows (easements and rights-of-way)	x	
Design calculations of cross sections and method of stabilization of existing and planned channels (include temporary linings)	x	
Design calculations and construction details of energy dissipaters below culvert and storm sewer outlets (diameters and apron dimensions)	x	
Design calculations and dimension of sediment basins	x	
Surface area and settling efficiency information for proposed sediment traps and/or basins	x	
Vegetative Stabilization		
Area and acreage to be vegetatively stabilized	x	x
Methods of soil preparation	x	x
Seed type and rates (temporary and permanent)	x	x
Fertilizer type and rates	x	
Mulch type and rates	x	x
Financial Responsibility and Ownership Form		
Completed, signed and notarized Financial Responsibility/Ownership form	x	x
Copy of the most current deed for the site	x	x
Certificate of assumed name, if the owner is a partnership	x	x
Name of registered agent (if applicable)	x	x
Narrative and Construction Sequence		
Narrative describing the nature and purpose of the construction activity	x	
Construction sequence related to erosion and sedimentation control (including installation of critical measures prior to the initiation of the land disturbing activity and removal of measures after areas they serve are permanently stabilized)	x	
Bid specifications related only to erosion control	x	
If within the municipal limits, a letter from that municipality stating the project meets their zoning requirements.	x	x
Designation on the plans where the 7 or 14 day ground stabilization requirements apply as per Section II.B.2 of the NPDES Construction Stormwater General Permit NCG010000	x	x
Design of basins with one acre or more of drainage area for surface withdrawal as per Section II.B.4 of the NPDES Construction Stormwater General Permit NCG010000	x	x

* If the same person conducts the land-disturbing activity and any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land-disturbing activity unless the borrow or waste activity is regulated under the Mining Act of 1971, or is a landfill regulated by the Division of Waste Management. If the land-disturbing activity and any related borrow or waste activity are not conducted by

the same person, they shall be considered separate land-disturbing activities and must be permitted either through the Sedimentation Pollution Control Act as a one-use borrow site or through the Mining Act. (amended 7/17/12, TA-2012-01)

C. Financial Responsibility and Ownership

Plans must be accompanied by an authorized statement of financial responsibility and ownership. The person financially responsible for the land-disturbing activity or his attorney in fact shall sign this statement. The statement shall include the mailing and street addresses of the principal place of business of (1) the person financially responsible, (2) the owner of the land, and (3) any registered agents.

If the person financially responsible is NOT a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the plan, the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance.

Except as provided in subsections C.1 or I of this section, if the applicant is NOT the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.

1. If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

D. Environmental Policy Act Document

Any plan submitted for a land-disturbing activity that requires an environmental document (i.e. environmental assessment, environmental impact statement, or a finding of no significant impact) by the North Carolina Environment Policy Act (G.S. 113A-1, et seq.) must provide a complete environmental document before the plan can be approved. Typically, an environmental document would be required for projects on public lands.

E. Content

The plan required by this section shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this ordinance and satisfy the standards contained within the North Carolina Erosion and Sediment Control Planning and Design Manual. Plan content

may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the County, on request.

F. Timeline for Decisions on Plans

The Erosion Control Administrator will review each complete plan submitted to them and within thirty (30) days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, ~~approved with performance reservations~~, or disapproved. Failure to approve, approve with modifications, or disapprove a complete plan within thirty (30) days of receipt shall be deemed approval.

The Administrator will review each revised plan submitted to them and within fifteen (15) days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, ~~approved with performance reservations~~, or disapproved. Failure to approve, approve with modifications, or disapprove a revised plan within fifteen (15) days of receipt shall be deemed approved.

G. Approval

The Administrator shall only approve a plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The Administrator shall conditionally approve plans based upon the applicant's compliance with federal and state water quality laws, regulations and rules. The Administrator may establish an expiration date, NOT to exceed three (3) years, for Plans approved under this ordinance **whereby no land-disturbing activity has been undertaken.**

H. Disapproval for Content

The Administrator may disapprove a plan or draft plan based on its content. A disapproval based upon a plan's content must specifically state in writing the reasons for disapproval.

I. Other Disapprovals

The Administrator shall disapprove a plan or draft plans if implementation of the plan would result in a violation of the rules adopted by either the Environmental Management Commission or Iredell County to protect riparian buffers along surface waters. A local government may disapprove a plan upon finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:

1. Is conducting or has conducted land-disturbing activity without an approved Plan, or has received notice of violation of a plan previously approved by the Commission or a local government

pursuant to the Act and has NOT complied with the notice within the time specified in the notice;

2. Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due.
3. Has been convicted of a misdemeanor ~~for knowing or willful violation of any provision(s) of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully initiated or continued a land-disturbing activity for which an erosion and sedimentation control plan was required, except in accordance with the terms, conditions, and provisions of an approved plan pursuant to G. S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to~~ **to this Article** ~~the Act~~ or;
4. Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act.

~~**5. For purposes of this subsection, an applicant's record may be considered for only the two years prior to the application date.**~~

In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the Administrator pursuant to subsection (I) of this section, the local government shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 10 days of the disapproval. The Administrator shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of Section 17A, the applicant may appeal the local government's disapproval of the plan directly to the North Carolina Sedimentation Control Commission.

J. Transfer of Plan

The Administrator may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.

1. The Administrator may transfer a plan if all of the following conditions are met:
 - a. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
 - b. The Administrator finds all of the following:

1. The plan holder is one of the following:
 - i. A natural person who is deceased.
 - ii. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - iii. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
 - iv. A person who has sold the property on which the permitted activity is occurring or will occur.
 2. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 3. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 4. There will be no substantial change in the permitted activity.
2. The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
 3. The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
 4. Notwithstanding changes to law made after the original issuance of the plan, the Administrator may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Administrator from requiring a revised plan pursuant to G.S. 113A-54.1(b).

K. Notice of Activity Initiation

No person may initiate a land-disturbing activity before notifying the Administrator of the date that land-disturbing activity will begin.

L. Pre-construction Conference

The contractor or financially responsible party shall contact the Erosion Control Administrator to set up a pre-construction meeting on site. Plans will need to be present at the pre-construction conference, where Iredell County will stamp it approved and issue a Certificate of Approval. Any construction prior to the pre-construction meeting will be considered work without an approved plan and in violation of this ordinance.

(amended 7/17/12, TA-2012-01)

M. Display of Plan Approval

A plan approval issued under this article shall be prominently displayed until all construction is complete, **all temporary measures have been removed**, all permanent sedimentation and erosion control measures are installed and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site.

N. Required Revisions

After approving a plan, if the Administrator either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the Administrator shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved plan, the Administrator determines that the plan is inadequate to meet the requirements of this ordinance; the Administrator may require any revision of the plan that is necessary to comply with this ordinance.

O. Amendment to a Plan

Applications for amendment of a plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the Administrator, the land-disturbing activity shall NOT proceed except in accordance with the plan as originally approved.

P. Failure to File a Plan

Any person engaged in land-disturbing activity that fails to file a plan in accordance with this ordinance, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this ordinance.

Q. Self-Inspections

The landowner, the financially responsible party, or the landowner's or financially responsible party's agent shall perform an inspection of the area covered by the plan after one (1) inch of rain fall, after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). **In addition, weekly and rain-event self-inspections are required by federal regulations, that are implement through the NPDES Construction General Permit No. NCG 010000.** The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been

established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1. These self-inspection reports are subject to review by Iredell County when requested at the time of inspection.

(amended 7/17/12, TA-2012-01)

Where inspections are required by Section 6.III.Q of this Ordinance and G.S. 113A-54.1(e), the following apply:

- (1) The inspection shall be performed during or after each of the following phases of the plan;**
 - (i) initial installation of erosion and sediment control measures;**
 - (ii) clearing and grubbing of existing ground cover;**
 - (iii) completion of any grading that requires ground cover;**
 - (iv) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and**
 - (v) transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item (iii) of this Item.**
- (2) Documentation of self-inspections performed under Item (1) of this Rule shall include:**
 - (i) Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;**
 - (ii) Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.**
 - (iii) The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.**
 - (iv) A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan.**

For the purpose of this Rule, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

1. ~~The person who performs the inspection shall make a record of the site inspection by documenting the following items:~~

~~a. all of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate (as defined in Sub-item (1)(e) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are modified after initial installation;~~

~~b. the completion of any phase of grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;~~

- ~~c. the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in Sub-item (1)(e) of this Rule) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;~~
 - ~~d. that maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and~~
 - ~~e. any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.~~
- ~~2. The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site.~~
- ~~3. The inspection shall be performed during or after each of the following phases of a plan:~~
- ~~a. installation of perimeter erosion and sediment control measures;~~
 - ~~b. clearing and grubbing of existing ground cover;~~

- ~~c. completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);~~
- ~~d. completion of storm drainage facilities;~~
- ~~e. completion of construction or development; and~~
- ~~f. quarterly until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion.~~

SECTION 7 Basic Control Objectives

An Erosion and Sedimentation Control Plan may be disapproved if the Plan fails to address the following control objectives:

A. Identify Critical Areas

On-site areas that are subject to severe erosion, and off-site areas that are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.

B. Limit Time of Exposure

All land-disturbing activities are to be planned and conducted to limit exposure to the shortest feasible time.

C. Limit Exposed Area

All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time **specified in G.S. 113A-57, the rules of this Chapter, or as directed by the Approving Authority.**

D. Control Surface Water

Surface water runoff originating upgrate of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

E. Control Sedimentation

All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.

F. Manage Storm Water Runoff

~~When the increase in the velocity of storm water runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, a plan is to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.~~
Plans shall be designed so that any increase in velocity of stormwater runoff resulting from land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.

SECTION 8 Design and Performance Standards

Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activities. No land-disturbing activity subject to the control of this ordinance shall be undertaken except in accordance with the following mandatory standards:

A. Maximum Peak Rate of Runoff

Except as provided in Section 5 B2 of this ordinance, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures **in the latest edition of the USDA, Natural Resources Conversation Service's "National Engineering Field Handbook", or other acceptable calculation procedures. included in but NOT limited to the "North Carolina Erosion and Sediment Control Planning and Design Manual"**.

B. HQW Zones

In High Quality Water (HQW) zones the following design standards shall apply:

1. Limit on Uncovered Area

Uncovered areas in HQW zones shall be limited at any time to a maximum total area of twenty acres within the boundaries of the tract. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Administrator **upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, and a more conservative design than the Twenty-five Year Storm.**

2. Maximum Peak Rate of Runoff Protection

Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed and constructed to provide protection from the runoff of the twenty-five year storm which produces the maximum peak rate of runoff

as calculated according to procedures in the **latest edition of the United States Department of Agriculture Natural Resources Conservation Service's "National Engineering Field Handbook" "North Carolina Erosion and Sediment Control Planning and Design Manual"** or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

3. Settling Efficiency Sediment Basin Design

Sediment basins within HQW zones shall be designed and constructed **according to the following criteria:** ~~such that the basin will have a settling efficiency of at least seventy percent (70%) for the forty (40) micron (0.04 millimeter) size soil particle transported into the basin by the runoff of that two year storm which produces the maximum peak rate of runoff as calculated according to procedures in the "North Carolina Erosion and Sediment Control Planning and Design Manual" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.~~

- (b) **use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;**
- (c) **have a minimum of 1800 cubic feet of storage area per acre of disturbed area;**
- (d) **have a minimum surface area of 325 square feet per cfs of the Twenty-five Year Storm (Q25) peak flow;**
- (e) **have a minimum dewatering time of 48 hours;**
- (f) **incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.**

Upon a written request of the applicant, the Director may allow alternative design and control measures in lieu of meeting the conditions required in subparagraphs (3)(ii) through (3)(v) of this sub-section if the applicant demonstrates that meeting all of those conditions will result in design or operational hardships and that the alternative measures will provide an equal or more effective level of erosion and sediment control on the site. Alternative measures may include quicker application of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.






4. Grade

Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other **forms of acceptable** ditch liners **proven as being effective in restraining accelerated erosion.** In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

5. Ground Cover

~~Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within seven (7) days.~~

Table H-8.1 Stabilization Timeframes

Site Area Description	Stabilization	Timeframe Exceptions
 Perimeter dikes, swales, ditches, and slopes	7 days	None
 High Quality Water (HQW) Zones	7 days	None
 Slopes steeper than 3:1	7 days	If slopes are 10' or less in length and are not steeper than 2:1, 14 days are allowed.
 Slopes 3:1 or flatter	14 days	7 days for slopes greater than 50' in length.
 All other areas with slopes flatter than 4:1	14 days	None, except for perimeters and HQW Zones.

(amended 7/17/12, TA-2012-01)

SECTION 9 Storm Water Outlet Protection

A. Intent

Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.

B. Performance Standard

Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does NOT exceed the greater of:

1. The velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
2. The velocity of the 10-year storm runoff in the receiving watercourse prior to development.
3. If condition (1) or (2) cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by ten percent (10%).

Table H-9.1 Maximum Permissible Velocities for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.)

Material	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

(amended 7/17/12, TA-2012-01)

C. Acceptable Management Measures

Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The County recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results.

Some alternatives, while NOT exhaustive, are to:

1. Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
2. Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
3. Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
4. Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and

5. Upgrade or replace the receiving device structure or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

D. Exceptions

This rule shall NOT apply where it can be demonstrated to the County that storm water discharge velocities will NOT create an erosion problem in the receiving watercourse.

SECTION 10 Borrow and Waste Areas

If the same person conducts the land-disturbing activity and any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land-disturbing activity, unless the borrow or waste activity is regulated under the Mining Act of 1971, G.S. 74, Article 7, or is a landfill regulated by the Division of Waste Management. If the land-disturbing activity and any related borrow or waste activity are not conducted by the same person, they shall be considered by the Approving Authority as separate land-disturbing activities.

~~When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are NOT regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the Department's Division of Waste Management shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is NOT also the person obtaining borrow and/or disposing of the waste, the areas shall be considered a separate land-disturbing activity.~~

SECTION 11 Access and Haul Roads

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

SECTION 12 Operations in Lakes or Natural Watercourses

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize **unnecessary** changes in the stream flow characteristics.

SECTION 13 Responsibility for Maintenance

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this Ordinance, the Act, or any order adopted pursuant to this ordinance or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

SECTION 14 Additional Measures

- A.** Whenever the County determines that **accelerated erosion and sedimentation continues despite the installation of protective practices, they shall direct the person conducting the land-disturbing activity to take additional protective action necessary to achieve compliance with the conditions specified in the Act or is rules.** ~~significant erosion and sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.~~
- B.** ~~On any project where there is more than 1 acre of drainage going to an erosion control measure, a surface dewatering device will need to be installed to this measure. Refer to Section II.B.4 of the NPDES Construction Stormwater General Permit NCG010000 for further information.~~

(amended 7/17/12, TA-2012-01)

SECTION 15 Existing Uncovered Areas

- A.** All uncovered areas existing on the effective date of this ordinance which resulted from land-disturbing activity, exceed one (1) acre (one half (1/2) acre or greater in a water supply watershed area), are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.
- B.** The County shall serve upon the landowner or other person in possession or control of the land a written notice to comply with the Act, this ordinance, a rule or order adopted or issued pursuant to the Act by the North Carolina Sedimentation Control Commission or by Iredell County. The notice to comply shall be sent by registered or certified mail, return receipt requested, or other means provided in GS 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving

notice should take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.

- C.** The County reserves the right to require preparation and approval of an Erosion Control Plan in any instance where extensive control measures are required.
- D.** This rule shall NOT require ground cover on cleared land forming the future basin of a planned reservoir.

SECTION 16 **Fees**

- A. The County may establish a fee schedule for the review and approval of Plans.
- B. In establishing the fee schedule, the County shall consider the administrative and personnel costs incurred for reviewing the Plans and for related compliance activities.

SECTION 17 **Plan Appeals**

- A.** Except as provided in Section 17 B of this ordinance, the appeal of a disapproval or approval with modifications of a Plan shall be governed by the following provisions:
 - 1. The disapproval or modification of any proposed Plan by the County shall entitle the person submitting the Plan to a public hearing if such person submits written demand for a hearing within fifteen (15) days after receipt of written notice of disapproval or modifications.
 - 2. The Board of Adjustment shall, pursuant to this section, conduct a hearing within sixty (60) days of the date of a timely written request for a hearing. If a hearing is NOT conducted within sixty (60) days of the date of a timely written request for a hearing, then the appeal will be found in favor of the appellant.
 - 3. The Board of Adjustment will render its final decision on any Plan following the completion of the hearings.
 - 4. If the Board of Adjustment upholds the disapproval or modification of a proposed Plan following the hearing, the person submitting the Plan shall then be entitled to appeal the County's decision to the Sedimentation Control Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d).
- B.** In the event that a Plan is disapproved pursuant to Section 6.III.I of this ordinance, the applicant may appeal the County's disapproval of the plan directly to the Commission.

SECTION 18 Inspections and Investigations

A. Inspection

Agents, officials, or other qualified persons authorized by the County will periodically inspect land-disturbing activities to ensure compliance with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required in the Plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each Plan.

B. Willful Resistance, Delay or Obstruction

No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the County, while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

C. Notice of Violation

If the County determines that a person engaged in land-disturbing activity has failed to comply with the Act, this ordinance, or rules, or orders adopted or issued pursuant to this ordinance, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance.

If the person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the County shall deliver the notice of violation in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program on behalf of the Approving Authority, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. If the County is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

D. Investigation

The County shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and **who presents appropriate credentials** for this purpose to enter at reasonable

times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

E. Statements and Reports

The County shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

SECTION 19 Penalties

If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taken, or a final decision following an appeal, the owner shall be subject to such remedies as may be provided for by State law or by Section 1.7 of the Code of Iredell County through the procedure detailed below:

I. Civil Penalties

A. Civil Penalty for a Violation

Any person who violates any of the provisions of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. The maximum civil penalty amount the County may assess per violation is five thousand dollars (\$5,000.00). The minimum civil penalty that the County shall assess per violation is two hundred fifty dollars (\$250) for the first disturbed acre and one hundred dollars (\$100) for each subsequent disturbed acre rounded up to the next whole acre.

For water supply watershed sites under one (1) acre, the minimum civil penalty is one hundred dollars (\$100). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

When the person has not been assessed any civil penalty under this subsection for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).

B. Civil Penalty Assessment Factors

In the event of a land-disturbing activity violation the Administrator shall assess the amount of the civil penalty based upon the following factors:

1. The degree and extent of harm caused by the violation,
2. The cost of rectifying the damage,

3. The amount of money the violator saved by noncompliance,
4. Whether the violation was committed willfully, and
5. The prior record of the violator in complying or failing to comply with this ordinance.

C. Notice of Civil Penalty Assessment

The Administrator shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4. A notice of assessment shall direct the violator to either pay the assessment, contest the assessment of any fine within **fifteen (15) thirty (30)** days after the receipt of the notice in writing to the Board of Adjustment, or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice **of assessment**. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based.

The Board of Adjustment shall hear an appeal within a reasonable time, and it may affirm, modify, or revoke the Notice of Violation. In the absence of an appeal, the decision of the Administrator shall be final.

D. Final Decision

The final decision on contested assessments shall be made by the Board of Adjustment in accordance with this Ordinance.

E. Appeal of Final Decision

Appeal from the final decision of the Board of Adjustment shall be to the Superior Court of Iredell County where the violation occurred. Such appeals must be made within thirty (30) days of the final decision of the Board of Adjustment.

F. Remission of Civil Penalties

A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the Board of Adjustment within 60 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. The following factors shall be considered in determining whether a civil penalty remission request will be approved:

- 1. Whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.**

2. Whether the petitioner promptly abated continuing environmental damage resulting from the violation.
3. Whether the violation was inadvertent or a result of an accident.
4. Whether the petitioner had been assessed civil penalties for any previous violations.
5. Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
6. The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.

[NOTE: THE PETITIONER HAS THE BURDEN OF PROVIDING INFORMATION CONCERNING THE FINANCIAL IMPACT OF A CIVIL PENALTY ON THE PETITIONER AND THE BURDEN OF SHOWING THE PETITIONER'S FINANCIAL HARDSHIP. THE BOARD OF ADJUSTMENT MAY REMIT THE ENTIRE AMOUNT OF THE PENALTY ONLY WHEN THE PETITIONER HAS NOT BEEN ASSESSED CIVIL PENALTIES FOR PREVIOUS VIOLATIONS AND PAYMENT OF THE CIVIL PENALTY WILL PREVENT PAYMENT FOR NECESSARY REMEDIAL ACTIONS. THE BOARD OF ADJUSTMENT MAY NOT IMPOSE A PENALTY UNDER THIS SECTION THAT IS IN EXCESS OF THE CIVIL PENALTY IMPOSED BY THE LOCAL PROGRAM.]

G. Collection

If payment is NOT received within thirty (30) days after it is due, the County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of Iredell County. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is NOT contested **and a remission that is not requested** is due when the violator is served with a notice of assessment. An assessment that is contested **or a remission that is requested** is due at the conclusion of the administrative and judicial review of the assessment.

H. Credit of Civil Penalties

Civil penalties collected pursuant to this ordinance shall be credited to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the County may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by **the each** County for the prior fiscal year.

II. Criminal Penalties

Any person who knowingly or willfully violates any provision of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which a Plan is required

except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor which may include a fine NOT to exceed \$5,000 as provided in G.S. § 113A-64.

SECTION 20 Final Certificate of Occupancy

With regard to a land disturbing activity that is associated with the development of any tract that is subject to this Ordinance, the Code Enforcement Department shall NOT issue a Certificate of Occupancy where any of the following conditions exist:

1. There is a violation with respect to the tract.
2. If there remain due and payable civil penalties to Iredell County that have been levied against the person conducting the land-disturbing activity for violation(s) of this Ordinance. If a penalty is under appeal, the Board of Adjustment may require the amount of the fine, and any other amount that the person would be required to pay to comply with this Ordinance if the person loses the appeal, to be placed in a refundable account or surety prior to issuing the Certificate of Occupancy.
3. The requirements of the approved erosion and sedimentation control plan have NOT been completed and the building for which a Certificate of Occupancy is requested is the only building then under construction on the tract.
4. On the tract which includes multiple buildings on a single parcel, the requirements of the plan have NOT been completed and the building for which a Certificate of Occupancy is requested is the last building then under construction on the tract.
5. On a tract which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the plan have NOT been completed with respect to the parcel for which the Certificate of Occupancy is requested.

SECTION 21 Stop Work Orders and Building Permit Abeyance

In the event of an illegal land disturbing activity the Administrator may order work on a project to be immediately stopped. This may be done in the form of a stop work order or by withholding building permits associated with the project in abeyance. The stop work order shall be in writing and directed to the owner, occupant, or person doing the work. The stop order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with N.C.G.S. 160A-421 or 153-361, as applicable, or the NC Building Code.

SECTION 22 Injunctive Relief

A. Violation of Local Program

Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the County or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the County for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Iredell County Superior Court.

B. Abatement of Violation

Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall NOT relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this ordinance. The County shall issue no building, zoning, or environmental permits to the violator until such violation is abated.

SECTION 23 Restoration After Non-Compliance

The County may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57 (3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this ordinance.

SECTION 24 Severability

If any section or section or sections of this ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

SECTION 25 Effective Date

This ordinance becomes effective upon adoption.

SECTION 26 Adoption Certification

I hereby certify that this is a true and correct copy of the Soil Erosion and Sediment Control Ordinance as adopted by the Board of Commissioners of Iredell County, North Carolina, on the ___ day of _____, 2021.

WITNESS my hand and the official seal of Iredell County, this the nineteenth ____ day of _____, 2021.

(signature)
(amended 11/19/19, TA-2019-02)

(amended, TA-2021-02)